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# DOCKET ENTRIES

*United States District Court for the District of Maryland*

1968

Oct. 24—Complaint, filed.

Oct. 24—Motion of Plaintiffs for Temporary Restraining Order and Preliminary Injunction; Affidavits, and to convene Three Judge Court, filed.

Oct. 24—Notification and Request to Designate a Three-Judge Court (Thomsen, C. J.), filed.

Oct. 25—Designation of Three-Judge Court (Haynsworth, C. J. — Fourth Circuit).

Oct. 25—Answer of Defendants Rose K. Dawson and Marie M. Garber, filed.

Oct. 25—Plaintiff's Memorandum of Facts and Law, Statement of Facts, filed.

Oct. 25—Hearing on Motion of plaintiffs for Temporary Restraining Order and Preliminary Injunction, before Winter, Circuit Judge, Thomsen, C. J., Harvey, J.

Oct. 25—Appearance of Charles R. Richey, Esquire, (as Amicus Curae for the Republican State Central Committee for Montgomery County, Maryland, Order), filed.

Oct. 25—Argued and held sub-curia.

Oct. 28—Opinion and Order of Court, (Thomsen, C. J.) that Rose K. Dawson and Marie M. Garber, Members of the Permanent Board of Registry for Montgomery County, Maryland, be and they are hereby enjoined from removing the names of Tillye Cornman, Herbert Tabor, Celia White Tabor, Mary D. Pratt, Reynold R. Holliday, Elizabeth J. Holliday, Chris A. Hansen, Mary E. Hansen, Carlos Schultz and Frances Legallais from the voters' registry in Montgomery County, until further order of this Court, or from denying them the right to vote at the election on November 5, 1968, and are hereby required to restore to the voters'

registry the name of Frances Legallais if it has been removed. This order does not require defendants to register Edward Tabor and Elliot Vesell, filed.

Nov. 26—Stipulation between counsel extending time of Plaintiffs to file briefs to December 20, 1968 and approval of Court (Thomsen, C. J.) thereon, filed.

Dec. 20—Defendants Memorandum and attachments, filed.

Dec. 26—Stipulation between counsel, re: Facts, filed.

1969

Jan. 2—Appearance of George W. Liebmann, Esquire as attorney for Defendants, Order filed.

Jan. 2—Case tried before the Court, Winter, Circuit, J.; Thomsen, C. J. and Harvey, J.

Jan. 2—Argued and held Sub-Curia.

Jan. 11—Stipulation between parties concerning tax burden borne by real property in Montgomery County, Maryland, &c, filed.

Jan. 29—Opinion of Court (Winter, Circuit Judge) Thomsen, Chief Judge District Court and Harvey, District Judge, filed.

Feb. 19—Order (Winter, Cir. Judge; Thomsen, Ch. Judge and Harvey Dist. Judge) that defendants are permanently enjoined from removing the names of Tillye Cornman, Herbert Tabor, Celia White Tabor, Mary D. Pratt, Reynold R. Holliday, Elizabeth J. Holliday, Chris A. Hansen, Mary E. Hansen, Carlos Schultz and Frances Legallais from the voters' registry in Montgomery County, as therein more particularly set forth; and that defendants cease and desist from refusing to place the names of Edward Tabor and Elliot Vesell on said voters' registry, etc., filed. (Notices mailed 2/20/69).

Mar. 18—Motion of Francis B. Burch, Attorney General of Maryland, and William Evans, Marshall W. Jones, Jr. and Betty M. Silbert, members of the Board of Supervisors of Elections of Baltimore City to Intervene as parties defendant herein, and proposed answer, filed.

April 10—Order (Harvey, J.) granting leave to Francis B. Burch, Attorney General of Maryland and William Evans, Marshall W. Jones, Jr. and Betty M. Silbert, etc. to intervene as party defendants herein, filed.

April 10—Answer of William Evans, Marshall W. Jones, Jr. and Betty M. Silbert, etc. and Francis B. Burch, Attorney General, filed.

April 14—Notice of Appeal of Defendants, Francis B. Burch, Attorney General of Maryland and William Evans, Marshall W. Jones, Jr., and Betty M. Silbert, members of and constituting the Board of Supervisors of Elections of Baltimore City, to the Supreme Court of the United States, filed. (copies mailed by counsel.)

June 9—Transcript of Proceedings before the Court (Winter, Cir., J., Thomsen, C. J., and Harvey, J.) on October 25, 1968, filed. (filed separately.)

June 9—Transcript of Proceedings before the Court (Winter, Cir., J., Thomsen, C. J. and Harvey, J.) on January 2, 1969, filed. (filed separatelv.)

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*United States District Court for the District of Maryland*

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*Civil Action No. 20028*

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*Tillye Cornman, et al.,*

*Plaintiffs,*

v.

*Rose K. Dawson, Member of the Permanent Board of Registry for Montgomery County, Maryland, et al.,*

*Defendants.*

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## COMPLAINT

(For Injunctive and Declaratory Relief)

1. This is an action for declaratory and injunctive relief to enforce the plaintiffs' right to register and vote in

the State of Maryland and to redress the deprivation under color of law of the State of Maryland of rights, privileges and immunities secured to plaintiffs under the Constitution of the United States. Jurisdiction is conferred on this Court by sections 1343, 1357, 2201 and 2202 of Title 28 of the United States Code and sections 1983 and 1988 of Title 42 of the United States Code. As more fully appears hereinafter, the action seeks to restrain the enforcement or execution of an order made by an administrative board acting under certain provisions of the Constitution and Code of Laws of the State of Maryland upon the ground that these provisions as interpreted by the defendants are unconstitutional and plaintiffs are requesting the convening of a Three Judge District Court to grant such relief, as provided under 28 U.S.C. §§2281-2284.

2. Plaintiffs are citizens of the United States and the State of Maryland, they have been bona fide residents of the State of Maryland for at least one year and of Montgomery County for at least six months, and they satisfy the qualifications for registration and voting under the Election Laws of the State of Maryland.

3. Plaintiffs Tillye Cornman, Mary D. Pratt, Herbert Tabor, Celia White Tabor, Reynold R. Holliday, Elizabeth J. Holliday, Chris A. Hansen, Mary E. Hansen, Carlos Shultz, and Frances Legallais are civilian employees (or spouses of civilian employees) of the Federal Government employed at the National Institutes of Health located in Montgomery County, Maryland, and all of the plaintiffs occupy living quarters located on the grounds of the National Institutes of Health. The Federal Government does not exercise or enjoy exclusive jurisdiction over plaintiffs or the places at which they live; plaintiffs are required to and do pay State and County income taxes, sales and use taxes, fuel taxes and motor vehicle registration and operator's license fees; they are subject to the jurisdiction of the State and local courts to the same extent as other residents of the State and County, and ordinances of the State and County are applicable to them in all material respects substantially to the same extent as to other residents of the State and County.

4. Defendants are the members of the Permanent Board of Registry for Montgomery County, Maryland and are charged by law with the duty to register and maintain on the voters registry the names of all eligible applicants for registration in said County.

5. Plaintiffs Tillye Cornman, Mary D. Pratt, Herbert Tabor, Celia White Tabor, Reynold R. Holliday, Elizabeth J. Holliday, Chris A. Hansen, Mary E. Hansen, Carlos Shultz, and Frances Legallais, after complying with all the Elections Laws of Maryland, were duly registered on the voters registry in Montgomery County, Maryland prior to October 19, 1963. Plaintiffs Edward Tabor and Elliot Vesell, after having reached the age of 21 and being otherwise qualified to register and vote under the Election Laws of Maryland, have duly applied for registration in Montgomery County, Maryland.

6. On or about October 19, 1968, the defendants acting as and on behalf of the Permanent Board of Registry of Montgomery County, Maryland, advised plaintiffs Tillye Cornman, Mary D. Pratt, Herbert Tabor, Celia White Tabor, Reynold R. Holliday, Elizabeth J. Holliday, Chris A. Hansen, Mary E. Hansen, Carlos Shultz, and Frances Legallais that their names would be removed from the voters registry in Montgomery County solely for the reason that the plaintiffs "reside on Federal property within Montgomery County and, as such, do not qualify for voting in Maryland under the State Constitution." Said defendants in the same capacity, have refused to register plaintiffs Edward Tabor and Elliot Vesell for the same reason.

7. Said action on the part of defendants will cause plaintiffs to suffer irreparable injury for which they have no adequate remedy at law in that it will deprive plaintiffs of the right to vote in elections for National, State and local offices scheduled to take place on November 5, 1968 and thereafter.

8. In taking said action, defendants purported to be acting under the provisions of Article I, section 1 of the Constitution of Maryland and statutes thereunder as construed by a decision of the highest court of Maryland.

9. Defendants' aforesaid conduct and the provisions of the Maryland Constitution and statutes under which the defendants purported to act violate the rights of the plaintiffs under the Constitution of the United States including the Equal Protection Clause of the Fourteenth Amendment in that, among other things:

(a) They deny to persons otherwise qualified and who are in fact residents of the State of Maryland and Montgomery County the right to an equal opportunity for political representation in the legislative and executive branches of the National, State and local government.

(b) They are based upon a classification of persons eligible to vote which has no reasonable relationship to any lawful purpose which may be served by the Election Laws of Maryland.

(c) They constitute invidious discrimination against the plaintiffs.

(d) They deny to plaintiffs their privileges and immunities as citizens of the United States and of the State of Maryland.

Wherefore, plaintiffs pray that a special Three Judge Court be convened to hear and determine this cause and that judgment be entered in favor of the plaintiffs as follows:

(1) Declaring that the plaintiffs Tillye Cornman, Herbert Tabor, Celia White Tabor, Edward Tabor, Mary D. Pratt, Elliot Vesell, Reynold R. Holliday, Elizabeth J. Holliday, Chris A. Hasen, Mary E. Hansen, Carlos Shultz and Frances Legallais may not be removed from the voters' registry in Montgomery County or be denied the right to register and vote by the defendants solely because they reside at places located on Federal property within Montgomery County, Maryland.

(2) Enjoining the defendants, and each of them, preliminarily and permanently, from removing any of the aforesaid plaintiffs' names from the voters' registry in Montgomery County or denying them the right to register

and vote solely because they reside at places located on Federal property within Montgomery County, Maryland.

(3) Directing the defendants, and each of them, to restore to the voters' registry in Montgomery County and to register any of the plaintiffs whose names have been removed from the voters' registry or whose registration has been refused solely because they reside at places located on Federal property within Montgomery County, Maryland.

(4) Granting plaintiffs such other and further relief as may be just and proper.

(Signatures of counsel.)

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*United States District Court for the District of Maryland*

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## ANSWER

The Answer of Rose K. Dawson and Marie M. Garber, Defendants, to the Complaint heretofore brought against them in the above-captioned matter respectfully represents:

1. They admit the jurisdiction of this court as alleged in Paragraph 1 of said Complaint.

2. They admit that the Plaintiffs are citizens of the United States but deny that they are citizens or residents of the State of Maryland in satisfaction of the qualifications for registration and voting under the election laws of the State of Maryland.

3. They admit that portion of Paragraph 3 of said Complaint which alleges that certain of the Plaintiffs are occupying living quarters located on the grounds of the National Institutes of Health in Montgomery County, Maryland, and say further that such Plaintiffs are, in fact, residents of the federal reservation constituted by the grounds of the National Institutes of Health. The allegation that

the federal government does not exercise or enjoy exclusive jurisdiction over Plaintiffs or the places at which they live is a legal conclusion of the Plaintiffs but, controverting the same, these Defendants refer the court to the provisions of the Annotated Code of Maryland (1964 Replacement Volume), Article 96, Section 34 (Acts of 1953, Chapter 158) under which the State of Maryland consented to the acquisition by the United States of a certain tract of land therein described, comprising 317.7 acres, for the "National Institutes of Health — Montgomery County, Maryland". Subsection (b) of said Section 34 specifically provides that exclusive jurisdiction over that parcel of land "shall be and the same is hereby ceded to the United States for all purposes except that the State retains the right to serve thereon all civil and criminal process of the courts of this State". The final condition of said Section 34 regarding the actual acquisition of the site by the United States has been satisfied.

Further answering said Paragraph 3, Defendants admit that the Plaintiffs are required to and do pay State and county income taxes, sales and use taxes, fuel taxes and motor vehicle registration and operator's license fees to the State of Maryland but say further that the imposition of such taxes is attributable either to special Congressional permission or to taxable incidents unconnected with the residency of the Plaintiffs on a federal reservation.

Further answering said Paragraph 3, Defendants say that the fact that the Plaintiffs are subject to the jurisdiction of the State and local courts and to the application of ordinances and laws of the county and State "in all material respects substantially to the same extent as to other residents of the State and county" necessarily has no reference to the conduct and activities of Plaintiffs upon the confines of the federal reservation on which they reside, since the exception to the State's grant of jurisdiction contains only the exception mentioned above as to the right of the State to serve process of the courts therein. In proper context, therefore, the allegations as to the jurisdiction of the courts and the application of the laws of this State and its subdivisions are immaterial to the issue before the court.

4. They admit the allegations of Paragraph 4 of said Complaint.

5. They deny the allegation contained in the first sentence of Paragraph 5 that certain of the Plaintiffs "after complying with all of the election laws of Maryland, were duly registered on the voters' registry in Montgomery County, Maryland, prior to October 19, 1968", but say on the contrary that, although some of the Plaintiffs were so duly registered in compliance with the election laws at some time prior to October 19, 1968, immediately prior to that date such Plaintiffs were no longer residents of the State of Maryland and, therefore, did not have the ability to comply contemporaneously with the election laws of Maryland.

They admit the allegation of the second sentence of said paragraph as to the application of the Plaintiffs Edward Tabor and Elliot Vesell but deny that said Plaintiffs are qualified to register and vote under the election laws of Maryland.

6. They admit the allegations of Paragraph 6 of said Complaint.

7. They admit the allegations of Paragraph 7 of said Complaint.

8. They admit the allegations of Paragraph 8 of said Complaint.

9. The allegations of Paragraph 9 of said Complaint amount to legal conclusions by the Plaintiffs but these Defendants controvert them, and these Defendants say that the conclusions therein expressed incorporate erroneous conclusions of fact.

Wherefore, having fully answered the said Complaint, the Defendants pray that the same may be dismissed with costs to the Plaintiffs.

(Signatures of counsel and certificate of service.)

*United States District Court for the District of Maryland*

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## INITIAL OPINION

Thomsen, Chief Judge:

The twelve plaintiffs in this case are citizens of the United States who reside on the grounds of the National Institute of Health, a federal reservation in Montgomery County, Maryland. Prior to October 19, 1968, ten of the twelve plaintiffs were registered on the voters' registry in Montgomery County. On or about that date defendants, who are the members of the Permanent Board of Registry of Montgomery County, notified the ten that their names would be removed from the voters' registry in that County before the general election to be held on November 5, 1968, solely for the reason that they "reside on Federal property within Montgomery County and, as such, do not qualify for voting in Maryland under the State Constitution". See Article 1, section 1 of the Maryland Constitution, and *Royer v. Board of Election Supervisors for Cecil County*, 231 Md. 561, 191 A. 2d 446 (1963). For the same reason defendants have refused to register the other two plaintiffs.

Promptly after receiving such notice, plaintiffs consulted counsel, who prepared, filed and presented to me on Thursday, October 24, (1) a complaint, seeking declaratory and injunctive relief to prevent removal from the voters' registry the names of the ten plaintiffs who were registered, and to require the registration of the other two plaintiffs, and (2) a motion, supported by appropriate affidavits, for a temporary restraining order, a preliminary injunction and the convening of a three-judge court. Plaintiffs contend that the provision of the Maryland Constitution upon which defendants rely, as interpreted by the Maryland Court in *Royer*, violates the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

At the time the suit was filed the parties entered into a stipulation: (1) that the parties would cooperate to bring on for hearing promptly the motion for preliminary injunction; (2) that pending such hearing and determination by this court of said motion, defendants would take no steps to remove from the registry the names of nine of the ten registered plaintiffs;[1] and (3) that any party might move to modify the terms of the stipulation "to the same extent which such party would be entitled had the stipulation been in the form of a temporary restraining order issued after hearing".

On the same day oral notice of the application was given to Chief Judge Haynsworth of the Fourth Circuit,[2] and Judge Haynsworth designated Circuit Judge Winter and District Judge Harvey as the two other judges to serve on the three-judge court. Since Judge Winter will be engaged during the week of October 28 in hearing cases in Richmond, a hearing in this case was held on Friday, October 25, in the late afternoon. With commendable industry, counsel for defendants prepared and filed an answer, and the Deputy Attorney General of Maryland presented a reasoned argument at the hearing.[3] By agreement of the parties the case was submitted to the Court on the complaint, the answer and certain stipulations of fact.

The case presents a grave constitutional question, on which there appears to be a paucity of authority. The decision of the question will require careful consideration and will probably affect many persons, because of the number of federal reservations within the State of Maryland. Of necessity, the case was presented to the court with minimal opportunity for preparation by counsel or by the judges. Since the case was heard on complaint, answer and stipulations, a final judgment can be entered at

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[1] No reason for the omission of the tenth name from the stipulation was indicated at the hearing, and the court is advised that it was omitted by inadvertence.

[2] The oral notice was promptly supplemented by the customary written notice under 28 U.S.C. 2284.

[3] The notice to the Governor and the Attorney General of the State, required by 28 U.S.C. 2284(2), was acknowledged.

any time, but there will be no adequate opportunity before the election on November 5 for the study and conference which the importance of the case requires.

Therefore, the three judges believe that no final judgment should be entered at this time, but that I, to whom the application was made, should consider the issuance of a temporary restraining order.

Subsection 3 of 28 U.S.C. 2284 provides:

> "In any such case in which an application for an interlocutory injunction is made, the district judge to whom the application is made may, at any time, grant a temporary restraining order to prevent irreparable damage. The order, unless previously revoked by the district judge, shall remain in force only until the hearing and determination by the full court. It shall contain a specific finding, based upon evidence submitted to such judge and identified by reference thereto, that specified irreparable damage will result if the order is not granted."

It appears from the complaint, the answer and the stipulations that the plaintiffs will suffer irreparable damage, i.e., the denial of the right to vote in the election of November 5, 1968, if a temporary restraining order is not granted. But the ten plaintiffs who were already registered before October 19 are in a different status from the other two plaintiffs who were never registered. Since one of the recognized purposes of a temporary restraining order is to preserve the status quo, the temporary restraining order in this case will issue only as to the ten plaintiffs previously registered.

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## ORDER

Therefore, it is ORDERED by the United States District Court for the District of Maryland, this 28th day of October, 1968, at 4:00 p.m., that Rose K. Dawson and Marie M. Garber, Members of the Permanent Board of Registry for Montgomery County, Maryland, be and they are here-

by enjoined from removing the names of Tillye Cornman, Herbert Tabor, Celia White Tabor, Mary D. Pratt, Reynold R. Holliday, Elizabeth J. Holliday, Chris A. Hansen, Mary E. Hansen, Carlos Shultz and Frances Legallais from the voters' registry in Montgomery County until the further order of this court, or from denying them the right to vote at the election on November 5, 1968, and are hereby required to restore to the voters' registry the name of Frances Legallais if it has been removed. This order does not require defendants to register Edward Tabor and Elliot Vesell.

/s/ ROSZEL C. THOMSEN,

Chief Judge, U. S. District Court.

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*United States District Court for the District of Maryland*

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## STIPULATION

The following facts are hereby stipulated to be true:

1. The boundaries of Precinct 8 of Election District 7 of Montgomery County were first established by resolution of the Supervisors of Montgomery County which resolution became effective on January 1, 1942. The tract of land comprising the grounds of the National Institutes of Health ("NIH") is wholly within said Precinct 8. Said precinct boundaries, which have not been altered since 1942, are more fully delimited as follows:

> Beginning for the same at a point in the center of the intersection of two highways known respectively as Wisconsin Avenue or the Rockville Pike and the Old Georgetown Road and running thence with the center line of said Wisconsin Avenue or the Rockville Pike to a point where the said center line intersects the center line extended of a public road known both as Browns Lane and Cedar Lane, thence with the center line of the said Browns Lane or Cedar Lane to the intersection of said center line with the center line of

the Old Georgetown Road and Alta Vista thence with the center line of the said Old Georgetown Road in a southerly or south easterly direction to the place of beginning.

2. Residents of NIH are counted as residents of Maryland under the decennial census and Maryland's apportionment of seats in the United States House of Representatives is based on a population figure which includes such residents.

3. Plaintiff Tillye Cornman has lived in Maryland since December 1954, and has resided on the grounds of NIH since that same time. Dr. Cornman is a member of the Cedar Lane Unitarian Church of Bethesda. She has been a registered voter in Maryland since September 21, 1956.

4. Plaintiffs Chris A. and Mary E. Hansen have lived in Maryland since 1956 and have resided on the grounds of NIH since 1965. They have participated in the following local organizations: Mrs. Hansen has been a member of the Red Cross chapter; the Girl Scouts; and the Montgomery County PTA; Mr. Hansen is a member of the Maryland Society for Professional Engineers. They have been registered voters since April 18, 1958. They have one child who attended public school in Montgomery County, as a resident of Montgomery County.

5. Plaintiffs Reynold R. and Elizabeth J. Holliday have lived in Maryland since 1951 and have resided on the grounds of NIH since 1953. She was an active member of the St. Luke's Episcopal Church until 1963; both Hollidays now belong to the Bethesda Chevy Chase Y-Club. She has been a registered voter since March 12, 1956, and Mr. Holliday has been a registered voter since September 16, 1960. They have four children in public schools, since 1956 through the present time, who attended school as residents of Montgomery County.

6. Plaintiff Frances Legallais has lived in Maryland since 1942 and on the grounds of NIH since 1954. She has been a registered voter since October 22, 1947.

7. Plaintiff Mary D. Pratt has lived in Maryland since 1948 and has resided on the grounds of NIH since 1951. Some of her local activities include the following: active in elementary school PTAs, where she has held offices; Girl Scouts; the Bethesda YMCA. In 1954, Mrs. Pratt was Chairman of the Chevy Chase Area National Symphony Fund Drive. She is also a member of St. Luke's Episcopal Church. She has been a registered voter in Maryland since September 20, 1952. She has three children in public schools, since 1953 to the present time, who attended school as residents of Montgomery County.

8. Plaintiff Carlos Shultz has lived in Maryland since 1953 and has resided on the grounds of NIH since 1958. He is a member of the Bethesda Presbyterian Church. He has been a registered voter in Maryland since February 27, 1956.

9. Plaintiffs Herbert and Celia W. Tabor have lived in Maryland since 1948, and have resided on the grounds of NIH since 1949. Prior to moving to the grounds of NIH, the Tabors resided at 4818 Chevy Chase Drive, also in Montgomery County, Maryland. They have participated in Montgomery County PTAs for over 15 years, as well as having been active in Cub Scout work. They have belonged to the Wildwood Manor Swimming Association for the past 8 years. Both are members of the Temple Shalom, and past members of the Beth El Congregation. Mrs. Tabor has been a Montgomery County School Health Assistant, and is also licensed to practice medicine in the State of Maryland, said license having been granted while she was residing on the grounds of NIH. They contribute regularly to the Youth Orchestra. The Tabors have been registered voters in Maryland since October 5, 1960.

10. Plaintiff Edward Tabor has lived in Maryland since 1948 and has resided on the grounds of NIH since 1949. He has been a volunteer worker in Montgomery County elections, and has spent his summers teaching athletics. He attempted to register to vote in 1968, but was refused on the sole ground that his residence on the NIH reserve did not constitute residence in Maryland.

11. Plaintiff Elliot Vesell has lived in Maryland since 1963 and has resided on the grounds of NIH since 1963. He attempted to register to vote in 1968, but was refused on the sole ground that his residenc on the NIH reserve did not constitute residence in Maryland.

(Signatures of counsel.)

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*United States District Court for the District of Maryland*

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## STIPULATION

During the course of oral argument on January 2, 1969, the Court requested further information concerning the tax burden borne by real property in Montgomery County, Maryland. With respect thereto, the parties hereby stipulate as follows:

1. The Operating Budget of the Montgomery County Board of Education for the Fiscal Year, July 1, 1968 — June 30, 1969, total $110,549,170. $72.663,019 of the total budget is to be contributed by Montgomery County, while the remainder is to be contributed by the State of Maryland, the Federal Government, or to be derived from special charges. Of Montgomery County's total contribution, $61,857,019, or 55.95% of the total operating budget, was to be derived from the ad valorem (real property) tax. According to County Manager, Mason Butcher, actual receipts from the ad valorem tax are expected to be less than budgeted and actual receipts from the income tax are expected to be more than budgeted. Mr. Butcher now estimates that the ad valorem tax will equal about 50% of the total school operating budget.

2. The Operating Budget of the Montgomery County Council for the Fiscal Year July 1, 1968 — June 30, 1969, anticipates receipts of $37,885,886. $4,446,000 of the total budget is derived from the ad valorem tax while the remainder is to be derived from other taxes, license and per-

mit fees, intergovernmental revenues, charges for services, fines and forfeitures, and miscellaneous revenues. The ad valorem tax contribution therefore constitutes 11.74% of the total county operating budget.

3. The County and Board of Education debt service totals $15,957,815 for the current fiscal year. Almost all of this total is funded by the ad valorem taxes.

(Signatures of counsel.)

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*United States District Court for the District of Maryland*

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## OPINION

Harvey, District Judge:

In this action brought under the Civil Rights Act,[1] plaintiffs challenge a provision of the Maryland Constitution which they claim has denied them the right to vote. Pursuant to 28 U.S.C. §2281, a three-judge court has properly been convened, and the case has been heard on the pleadings and stipulations of the parties.

All twelve plaintiffs reside on the grounds of the National Institute of Health, a federal reservation located within the geographical boundaries of Montgomery County, Maryland. Ten of the twelve had been registered voters within the State of Maryland for many years until October 19, 1968 when they were advised by the defendants, who are members of the Permanent Board of Registry of Montgomery County, that their names would be removed from the County voters' registry because as residents of federal property they did not qualify for voting in Maryland under the State Constitution. Two of the plaintiffs attempted to register to vote in the general election to be held on November 5, 1968 but were not permitted to do so for the same reasons.

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[1] 28 U.S.C. §1343 and 42 U.S.C. §1983.

Plaintiffs thereupon filed this action seeking a declaratory judgment and injunctive relief which would prevent the removal from the voters' registry of the names of ten of the plaintiffs and which would require the registration of the other two plaintiffs. Plaintiffs also filed a motion together with affidavits seeking a temporary restraining order and a preliminary injunction. On October 25, 1968, which was one day after the complaint and motion were filed, a hearing was held before this Court. In view of the very short time for preparation on both sides, the Court did not attempt to render a decision on the merits of the case following that hearing. However, pursuant to 28 U.S.C. §2284(3), Chief Judge Thomsen entered an order on October 28, 1968 enjoining the defendants until further order of this Court from removing the names from the voters' registry of the ten plaintiffs who had previously been registered.[2] Such order did not require the defendants to register the other two plaintiffs. Following the submission of briefs, another hearing before the Court was held on January 2, 1969 at which time the case was fully argued on the merits. Additional stipulations have likewise been filed.

The provision of the Maryland Constitution under attack is Article I, §1, which gives the right to vote to every citizen of the United States of the age of 21 years or more "who has been a resident of the state for one year, and of * * * the county, in which he may offer to vote, for six months next preceding the election, * * *". In *Royer v.*

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[2] In the memorandum opinion accompanying his order, Judge Thomsen said the following:

> "The case presents a grave constitutional question, on which there appears to be a paucity of authority. The decision of the question will require careful consideration and will probably affect many persons, because of the number of federal reservations within the State of Maryland. Of necessity, the case was presented to the court with minimal opportunity for preparation by counsel or by the judges. Since the case was heard on complaint, answer and stipulations, a final judgment can be entered at any time, but there will be no adequate opportunity before the election on November 5 for the study and conference which the importance of the case requires."

*Board of Election Supervisors*, 231 Md. 561 (1963), cert. den. 375 U.S. 921 (1963), the Court of Appeals of Maryland held that residents of a federal enclave located within the State of Maryland are not residents of the State for the purposes of voting. Plaintiffs claim that as so construed, §1 of Article I of the Maryland Constitution denies them the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States. For the reasons hereafter stated, we agree.

Under Article I, section 8, clause 17 of the United States Constitution, Congress is empowered to "exercise exclusive Legislation in all Cases whatsoever * * * over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;". Ever since *Opinion of the Justices*, 42 Mass. 580 (1840), and *Sinks v. Reese*, 19 Ohio St. 306 (1869), it has been held in most of the cases considering the question that where the federal government has exclusive jurisdiction of an enclave, persons residing in such enclave are not state residents for voting purposes.[8] The rationale for these decisions was stated by the Court in *Sinks v. Reese* as follows, at page 316:

> "By becoming a resident [of the federal enclave], a person though up to that time he may have been a citizen and resident of Ohio, ceases to be such; he is relieved from any obligation to contribute to their revenues, and is subject to none of the burdens which she imposes upon her citizens. He becomes subject to the exclusive jurisdiction of another power, as foreign to Ohio as is the states of Indiana or Kentucky, or the District of Columbia."

In the earlier cases, there was little doubt that the United States had exclusive jurisdiction over the enclave

[8] In the *Royer* case, the Maryland Court of Appeals followed *Lowe v. Lowe*, 150 Md. 592 (1926), which held that a resident of a federal enclave in Cecil County had not acquired a State residence for the purpose of filing a divorce suit. Other state cases reaching the same result as to voting rights are collected in 34 A.L.R. 2d 1193-1202 (1954).

in question. However, the issue is presented in a somewhat different light in the pending case as a result of the enactment by Congress of various statutes which have effected a retrocession to Maryland and other states of portions of the federal government's exclusive jurisdiction over federal enclaves and the exercise by Maryland of the powers which Congress has returned to the State.

Where the federal government has exclusive jurisdiction over land located within the geographical boundaries of a state, it can hardly be doubted that no constitutional right of a resident of the enclave is infringed by the state's refusal to grant such resident the right to vote. But it would be equally clear that if there were a retrocession by the federal government to a state of all or substantially all incidents of jurisdiction, such state could not constitutionally deny residents of the enclave the right to vote.[4] The facts of the present case lie somewhere in between these readily demonstrable extremes. The question here is whether Maryland has undertaken to impose on residents of this federal enclave obligations and duties of state citizenship to such a degree that it would amount to unconstitutional discrimination if the right to vote were not likewise granted. Determination of this question requires a balancing of the incidents of jurisdiction still retained by the federal government against those exercised by the State of Maryland as well as consideration of the nature of the right that plaintiffs claim has been denied to them.

Exclusive jurisdiction to lands acquired by the United States for general purposes was ceded by the State of

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[4] See *Report of the Interdepartmental Committee for the Study of Jurisdiction over Federal Areas within the States*, Part II (June 1957), pages 221-222. This Committee was formed in 1954 with the approval of President Eisenhower to study the problems arising out of the jurisdictional status of federally owned areas within the several states, which the Department of Justice had found to be "in a confused and chaotic state." Part I, page 2. The Committee noted that there were four categories of legislative jurisdiction over such areas: exclusive jurisdiction, concurrent jurisdiction, partial jurisdiction and proprietorial interest only. A discussion of these four categories may be found at pages 15-22 of Part I of the Report.

Maryland to the federal government by virtue of Chapter 743 of the Acts of 1906, now codified as §§31, 36 and 37 of Article 96 of the Annotated Code of Maryland (1964 Repl. Vol.). Specific consent was given for the acquisition of the grounds of the National Institute of Health in Montgomery County by §34 of Article 96. Both §34 and §36 provide that the State shall retain the right to serve on the federal lands civil and criminal process of the courts of the State.[5]

The first of a series of enactments returning to the states portions of the federal government's exclusive jurisdiction over enclaves was passed by Congress in 1928. In that year, a statute was enacted which provided that in the case of the wrongful death of any person on a federal enclave, the same right of action would exist as though the place were under the jurisdiction of the state within whose exterior boundaries the place was. 16 U.S.C. §457. In 1936, Congress authorized the states to extend to such areas their workmen's compensation laws. 40 U.S.C. §290. In that same year, the Lea Act was passed which permitted the levying of gasoline and other motor vehicle fuel taxes upon fuels sold in federal enclaves. 4 U.S.C. §104.

In 1939, jurisdiction was returned to the states to enforce their unemployment insurance laws within the borders of federal lands. 26 U.S.C. §3305(d). The most extensive and far reaching retrocession statute enacted by Congress was the Buck Act in 1940. 4 U.S.C. §§105-110. That enactment gave the states "full jurisdiction and power" to levy and collect sales, use and income taxes within federal enclaves. A 1947 enactment permitted the states to tax a lessee's interest in real estate leased by the federal government from within an enclave. 10 U.S.C. §2667(e).

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[5] The reservation of this right has been seen as an act of comity and not inconsistent with the exclusive jurisdiction of the federal government. *Fort Leavenworth R.R. Co. v. Lowe*, 114 U.S. 525, 534 (1885).

Under the Assimilative Crimes Act, 18 U.S.C. §13,[6] the criminal laws of the states are applicable to federal enclaves, if the act or omission is not punishable by a Congressional statute. A 1948 amendment of this Act provides that the state law in force at the time of the act or omission governs if there is no pertinent federal law, eliminating the previous requirement of periodic re-enactments of the Act to keep abreast of changes in state penal laws. In 1950, Congress provided for payments by the federal government to local schools for the children of residents of federal reservations attending such schools. 20 U.S.C. §236 et seq.[7]

The Maryland Legislature, although not granting residents of federal enclaves within the State the right to vote, has conferred other benefits of State citizenship on such individuals. Following the decision of the Court of Appeals in *Lowe v. Lowe, supra,* the Legislature in 1927 permitted residents of federal enclaves to use the State courts for divorce matters. §23 of Article 16, Annotated Code of Maryland (1957 Ed.). Later it opened the State courts to such residents for adoption proceedings. §69, Article 16. Children of such residents are permitted to attend school in the counties in which are located the reservations where they live.

This cataloguing of State and federal enactments indicates that the concept of exclusive federal jurisdiction over reservations such as the one here involved has been drastically altered within the past 40 years. The plaintiffs here may be prosecuted under State criminal statutes, are subject to State unemployment and workmen's compensation laws, and have access to the State courts under acts permitting divorce and adoption proceedings. However,

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[6] The first Assimilative Crimes Act was enacted in 1825 and has been amended on several occasions since then. See *Report of the Interdepartmental Committee,* Part II, pages 126-131.

[7] It should further be noted that plaintiffs are counted as residents of Maryland under the decennial census. Therefore, Maryland's apportionment of seats in the United States House of Representatives is based on a population figure which includes them.

they have no voice in the selection of legislators who may amend these statutes or enact new ones which will affect their rights as to these matters. The children of these plaintiffs attend local schools in Montgomery County. Yet their parents have no voice in the selection of members of the school board. Income, sales and gasoline taxes are undeniably major sources of revenue for the State of Maryland. Although the plaintiffs here are compelled to pay such taxes, they may not participate in the election of the legislators responsible for the enactment of tax statutes within the State.

The rationale of the earlier decisions denying the right to vote to a resident of a federal enclave has been undercut by the various retrocessions by Congress of its otherwise exclusive jurisdiction. No longer is it true, as stated in *Sinks v. Reese, supra,* 19 Ohio St. at 401, that such a resident "is relieved from any obligation to contribute to [a state's] revenues and is subject to none of the burdens which she imposes upon her citizens." Nor is there validity today to the statements made by the Maryland Court of Appeals in 1926 in *Lowe v. Lowe, supra,* that such residents "are not residents of the State of Maryland * * * for taxation purposes" and that "the federal government has complete and exclusive jurisdiction and power of legislation" over a federal reservation within the State. 150 Md. at pages 600-601.

The theory of the extraterritoriality of a federal enclave was impliedly rejected by the Supreme Court in *Howard v. Commissioners of Louisville,* 344 U.S. 624 (1953). In that case, the issue was whether the City of Louisville could lawfully annex a federal enclave on which was located a Naval Ordnance Plant. The trial court had concluded that since the federal government had exclusive jurisdiction over the reservation, it was no longer a part of the State of Kentucky, subject to annexation. The Court of Appeals of Kentucky reversed. *Commissioners of Sinking Fund v. Howard,* 248 S.W. 2d 340 (Ky. 1952). In affirming that decision, the United States Supreme Court said the following (344 U.S. at 626-627):

> "A state may conform its municipal structures to its own plan, so long as the state does not interfere with

the exercise of jurisdiction within the federal area by the United States. Kentucky's consent to this acquisition gave the United States power to exercise exclusive jurisdiction within the area. A change of municipal boundaries did not interfere in the least with the jurisdiction of the United States within the area or with its use or disposition of the property. *The fiction of a state within a state can have no validity to prevent the state from exercising its power over the federal area within its boundaries, so long as there is no interference with the jurisdiction asserted by the Federal Government.* The sovereign rights in this dual relationship are not antagonistic. Accommodation and cooperation are their aims. It is friction, not fiction to which we must give heed." (Emphasis added).

The State of Maryland here argues that since substantial portions of the federal government's exclusive jurisdiction over this land is still retained by the United States, the State is constitutionally justified in declining to permit plaintiffs to vote. In particular, it is noted that the plaintiffs pay no property taxes,[8] that they are exempt from personal service as a part of the State's unorganized militia, that their children are not subject to State compulsory education laws and that they are exempt from State jury service. That the federal government still retains wide authority over this federal enclave does not answer the question before the Court, for it is likewise clear that in the aggregate the jurisdiction over plaintiffs that has been returned to Maryland is extensive. We are not concerned here with Maryland's refusal to grant to residents of a federal enclave ordinary rights and privileges given to other citizens of the State. The question before the Court is whether the State can constitutionally withhold from these plaintiffs a right as vital as the right to vote.

Exercise of the elective franchise has always been considered one of the most basic of those rights enjoyed by a

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[8] Property taxes account for about 50% of the operating budget of the Montgomery County Board of Education and about 12% of the operating budget of the County itself.

citizen of a free democratic society. In *Carrington v. Rash*, 380 U.S. 89 (1965), the Supreme Court had before it a challenge to a provision of the Texas Constitution which prohibited from voting in State elections any member of the armed forces moving to Texas during his tour of duty. In finding that such a prohibition was an invidious discrimination in violation of the Fourteenth Amendment, the Court said the following at page 96:

> "We deal here with matters close to the core of our constituitonal system. 'The right . . . to choose,' *United States v. Classic*, 313 U.S. 299, 314, that this Court has been so zealous to protect, means, at the least, that States may not casually deprive a class of individuals of the vote because of some remote administrative benefit to the State. *Oyama v. California*, 332 U.S. 633."

In the more recent case of *Williams v. Rhodes*, 393 U.S. 23, (decided October 15, 1968), the Court reaffirmed its statement in *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964), in which it said the following with reference to the right to vote (at page 31):

> "No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined,".

We conclude that on balance the plaintiffs here are treated by the State of Maryland as state residents to such an extent that it is a violation of the Fourteenth Amendment for the State to deny them the right to vote. A state may not subject an individual who resides within its geographical boundaries to substantial obligations of citizenship and at the same time deny such individual the correlative right to exercise a voice in defining the nature and extent of such obligations. It is no answer to say that there are many rights and obligations of citizens of Maryland which are not enjoyed by or have not been assumed by these plaintiffs. Without determining which way the scales would tip with respect to other rights, we are of the opinion that the incidents of jurisdiction exercised by

Maryland over these plaintiffs are sufficiently weighty that the important right claimed here cannot be constitutionally denied.

Similar reasoning was employed by the Court in *Arapajolu v. McMenamin*, 113 Cal. App. 2d 824, 249 P. 2d 318, 34 A.L.R. 2d 1185 (1952),[9] a decision of the California District Court of Appeal, review of which was denied by the Supreme Court of California. In finding that a resident of a federal enclave located within the State of California was a resident of the state entitled to vote, the court said the following (34 A.L.R. 2d at 1191-1192):

> "The jurisdiction over these lands is no longer full or complete or exclusive. A substantial portion of such jurisdiction now resides in the States and such territory can no longer be said with any support in logic to be foreign to California or outside of California or without the jurisdiction of California or within the exclusive jurisdiction of the United States. It is our conclusion that since the State of California now has jurisdiction over the areas in question in the substantial particulars above noted residence in such areas is residence within the State of California entitling such residents to the right to vote given by sec. 1, Art. II of our Constitution."

For the reasons stated, plaintiffs are entitled to the relief that they are seeking. Counsel should prepare and submit within ten days an appropriate order.

/s/ HARRISON L. WINTER,
United States Circuit Judge,

/s/ ROSZEL C. THOMSEN,
Chief Judge,
United States District Court,

/s/ ALEXANDER HARVEY, II,
United States District Judge.

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[9] Two other state courts have likewise held residents of a federal enclave to be residents of the state for voting purposes. *Adams v. Landree*, 139 W. Va. 748, 83 S.E. 2d 127 (1954) and *Rothfels v. Southworth*, 11 Utah 2d 169, 356 P. 2d 612 (1960).

*United States District Court for the District of Maryland*

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## ORDER

In accordance with the opinion of the United States District Court for the District of Maryland, dated 29th January 1969:

It is hereby ORDERED by the United States District Court for the District of Maryland, this 19th day of February, 1969 that Rose K. Dawson and Marie M. Garber, Members of the Permanent Board of Registry for Montgomery County, Maryland, be and they hereby are permanently enjoined from removing the names of Tillye Cornman, Herbert Tabor, Celia White Tabor, Mary D. Pratt, Reynold R. Holliday, Elizabeth J. Holliday, Chris A. Hansen, Mary E. Hansen, Carlos Schultz and Frances Legallais from the voters' registry in Montgomery County as long as such removal is based on the contention that their residence on the NIH enclave does not constitute residence in the State of Maryland; and Rose K. Dawson and Marie M. Garber are further ordered to cease and desist from refusing to place on said voters' registry the names of Edward Tabor and Elliott Vesell on the ground that their residence on the NIH enclave does not constitute residence in the State of Maryland.

/s/ HARRISON L. WINTER,
United States Circuit Judge,

/s/ ROSZEL C. THOMSEN,
Chief Judge
United States District Court,

/s/ ALEXANDER HARVEY, II,
United States District Judge.

*United States District Court for the District of Maryland*

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## ORDER

Upon the Motion To Intervene filed by Francis B. Burch, Attorney General of Maryland, and William Evans, Marshall W. Jones, Jr. and Betty M. Silbert, members of the Board of Supervisors of Elections of Baltimore City on March 17, 1969; and no objection having been filed thereto; and after consultation and approval of this Order by all three of the Judges sitting in this case, it is

ORDERED this 10th day of April, 1969, that leave be granted the said Francis B. Burch, Attorney General of Maryland, and the said William Evans, Marshall W. Jones, Jr. and Betty M. Silbert, members of the Board of Supervisors of Elections of Baltimore City, to intervene as parties defendant in this action and to file the Answer annexed to the Motion To Intervene.

/s/ ALEXANDER HARVEY, II,
United States District Judge.

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*United States District Court for the District of Maryland*

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## ANSWER

Wm. Evans, Marshall W. Jones, Jr. and Betty M. Silbert, constituting the Board of Supervisors of Elections of Baltimore City and Francis B. Burch, Attorney General of Maryland, intervening defendant, answering the Complaint heretofore filed in this cause, states that:

1. They admit the jurisdiction of this Court as alleged in Paragraph 1 of said Complaint.

2. They admit that the plaintiffs are citizens of the United States and deny that they are citizens or residents of the State of Maryland or that they satisfy the qualifica-

tions for registration and voting under the Election Laws of State of Maryland.

3. They admit those portions of Paragraph 3 of the Complaint alleging that the plaintiffs occupy living quarters located on the grounds of the National Institutes of Health. They deny the allegation that the Federal Government does not exercise or enjoy exclusive jurisdiction over plaintiffs' residence and assert that plaintiffs are residents of a federal reservation under the exclusive jurisdiction of the Federal Government. They admit that plaintiffs are required to pay state income, and sales and use taxes and motor vehicle registration and license fees and refer to the provisions of the Buck Act as to the extent of plaintiffs' liability for motor fuel taxes. They deny that plaintiffs are subject to the jurisdiction of the State or local courts to the same extent as other residents of the State or County and deny that ordinances of the State or County are applicable to them in all material respects substantially to the same extent as to other residents of the State or County.

4. They admit the allegations of Paragraph 4 of the Complaint.

5. They deny that any of the plaintiffs have complied with all the Election Laws of Maryland or are qualified to vote in Maryland, but admit that the names of some of them appear on the registry and that others have applied for registration.

6. They admit the allegations of Paragraph 6 of said Complaint.

7. They deny the allegations of Paragraph 7 of the Complaint.

8. They admit the allegations of Paragraph 8 of the Complaint.

9. They deny the allegations of Paragraph 9 of the Complaint.

Wherefore, having fully answered the said Complaint, the defendants pray that the same may be dismissed with costs to the plaintiffs.

(Signatures of counsel and certificate of service.)